The Citizens Companies recommend that TSLRIC operate as the first of two fundamental elements in structuring rates for interconnection and unbundled elements, *i.e.*, as a price floor. The TSLRIC price floor ensures that the incumbent LEC recovers, at a minimum, the costs directly attributable to the interconnection and unbundled elements purchased by the interconnecting carrier.[17] However, it must be recognized that incumbent LECs incur costs not included in TSLRIC. As a going business concern, the incumbent LEC should be allowed to price all of its services, including interconnection and network elements, in order to recover some reasonable portion of its shared and common expenses. Unlike most other business enterprises in America, incumbent LECs are subject to an extrinsic pricing constraint -- regulation of the pricing of at least certain of its service offerings -- that strictly limits shifting overhead costs to those market segments facing the least amount of competition. The Citizens Companies are not suggesting that restraints against incumbent LEC cost shifting and cross-subsidization are inappropriate, but rather that such carriers lack the ability of nonregulated business enterprises to load costs where they can in order to maximize cost recovery and profits. Accordingly, an opportunity for recovery of some measure of shared and common costs is an indispensable element in arriving at just and reasonable, cost-based rates for interconnection and network elements.

The Citizens Companies believe an incumbent LEC providing interconnection and network elements to other carriers should have the opportunity to price at levels that will provide a measure of contribution to the carrier's shared and common costs. Telecommunications carriers that are not

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[17] If interconnection and network element pricing is mandated at levels less than TSLRIC, inexorable pressure will be asserted on pricing for other services, particularly those in less competitive markets, in order for the enterprise to remain an ongoing business.

incumbent LECs have such an opportunity. Generally, in a competitive market, the market acts as the determinant of the portion of shared and common expenses that each service is to recover. Market forces typically result in lower mark-up on "wholesale" goods. Because the issue of allocation of shared and common costs is inherently subjective, the FCC's guidance to the states in this regard should be general in nature, establishing, at a minimum, that a reasonable allocation of shared and common costs is a permissible second element in arbitrating interconnection and network element pricing issues.

II.B.2.d.4. Discrimination

The Citizens Companies believe that the Sections 251 and 252's references to nondiscrimination singularly apply to interconnection relationships, and those references should be read independently of Section 202(a) and its body of case law. Intercarrier pricing practices, such as volume and term discounts and zone density pricing, that are cost-based are consistent with the two statutory sections and are nondiscriminatory, *per se*. Interconnection and network element pricing differentials are appropriate to the extent that differences exist in the costs of providing such services to different interconnectors. In fact, it can be argued that precluding such practices is unlawful in itself because of Section 252(d)(1)'s cost-driven pricing imperative. To the extent that the provision of a network element in large volume or for an extended term, for example, represents a cost saving to an incumbent LEC, that carrier must, under the Citizens Companies' reading of Section 252(d)(1), price accordingly.

II.B.2.e. Interexchange Services, Commercial Mobile Radio Services and Non-Competing Neighboring Local Exchange Carriers

II.B.2.e.1. Interexchange Services

Even if it is correct that an incumbent LEC is not required to provide interconnection pursuant to Section 251(c)(2) to telecommunications carriers for the purpose of originating or terminating interexchange traffic,[18] an argument that the Citizens Companies vigorously oppose,[19] the practical and unavoidable effect will still be the ultimate undermining of the prevailing access charge regime. The Commission acknowledges that interexchange carriers can form affiliates to obtain local exchange carrier authorizations, thereby benefitting from the statutory right to obtain cost-based interconnection arrangements from incumbent LECs These cost-based interconnection arrangements can be used in exchange access arrangements and any other telecommunications service dictated by the interconnector's business plan.[20] In the view of the Citizens Companies, Section 251 cannot be read to support the proposition that the benefits of Section 251 can be denied interexchange carriers

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[18] *NPRM* at ¶ 162.

[19] It appears that the Commission also finds no merit in this position. *See* the tentative conclusion in paragraph 270 of the *NPRM* that Section 251(i) does not allow incumbent LECs to limit interconnection or network elements provided to one carrier in an interconnection agreement to carriers providing the same service as the original party. This is another way of saying that interconnection and network elements can be put to whatever use a carrier deems appropriate.

[20] The Commission appears to recognize this reality. *See* paragraph 120 of the *NPRM*, where it is stated that

> consistent with our earlier discussion that sections 251 and 252 do not make jurisdictional distinctions between interstate and intrastate services and facilities, we tentatively conclude that the pricing principles we establish pursuant to section 251(d) would not recognize any jurisdictional distinctions, but would be based on some measure of unseparated costs.

and their affiliates. Any effort to impose "class of use" restrictions upon interconnection and network element arrangements is contrary to the law and, in any event, of no practical purpose.

In the case of the Citizens Companies and many other enterprises with interexchange carrier interests (and those presently without interLATA, interexchange carrier operations, *i.e.*, the Bell Operating Companies), the future lies in offering customers integrated packages of local exchange and long distance services. If the Commission's fear is that interexchange carriers will directly or through affiliates obtain Section 251(c)(2) interconnection solely for exchange access, the fear is not well taken.[21] The marketplace reality is that many, if not most, early entrants into local exchange competition will provide both telephone exchange and exchange access in the form of single brand, integrated service packages.

While Section 251(g) is clearly intended to preserve the current access regime until it is affirmatively changed, it is also clear that the Section 251 interconnection principles and Section 252 interconnection pricing principles will undermine the present access structure. For this reason, it is imperative that the Commission follow up on its stated intention to address access charge reform in the very near future.[22] The challenge to the FCC in this regard is identical to that facing the states -- how to eliminate noneconomic interconnection pricing without an adverse economic impact upon residential and low-income customers and customers in high-cost, rural and insular areas. Creation of an appropriate universal service plan is critical to achieving the Congressional local exchange

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[21] Even if the Commission's concern were meritorious, nothing in Section 251(c) requires that a carrier provide both telephone exchange service and exchange access services in order to receive cost-based interconnection from incumbent LECs.

[22] *NPRM* at ¶ 165.

competition goals.

II.B.2.e.2. Commercial Mobile Services

The Citizens Companies accept the proposition that Commercial Mobile Radio Service ("CMRS") providers are entitled to receive interconnection pursuant to Sections 251(c)(2) and 251(b)(5). Further, since the issues dealing with CMRS interconnection are primarily economic in nature, little purpose would be served in exploring the issue of whether certain types of CMRS providers, particularly one-way paging providers, fit within the ambit of Section 251(c)(2)(A). Instead, the scope of analysis should be directed to the reciprocal compensation issue.

As discussed in more detail in Section II.C.5.a of these comments, *infra*, the Citizens Companies believe that, inherent in the Section 251(b)(5) reciprocal compensation obligation, is the fundamental requirement of the reciprocal interchange of local exchange traffic. In a situation where the flow of traffic is entirely one-way in nature, there can obviously be no reciprocal interchange of traffic and no transport and termination compensation should be payable to the terminating carrier. Accordingly, there should be no requirement for the payment of terminating compensation to paging carriers and any other carriers with one-way traffic (from incumbent LEC network) flows. While the argument can be raised that the originating carrier in a one-way traffic flow situation benefits because of increased call generation, it also can be argued that the originating carrier receives no opportunity to offset its increased call generation costs with revenues from terminating traffic delivered by the other carrier. This is not a trivial issue given that state regulators may be reluctant to allow incumbent LECs to raise local exchange rates to recover the costs of paying terminating compensation, a concern that will be particularly acute in areas with mandatory flat-rate local exchange pricing.

II.B.2.e.3. Non-Competing Neighboring Local Exchange Carriers

Section 252(e)(1)'s reference to the necessity of state commission approval of "any interconnection agreement adopted by negotiation or arbitration" supports the conclusion that agreements between non-competing, neighboring local exchange carriers must be submitted for state approval.

II.B.3. Resale Obligations of Incumbent LECs

While service resale pursuant to Section 251(c)(4) will be an essential path to competitive entry for many providers, it alone cannot form the basis for vigorous, innovative competition and consumer choice in the local market. Service resale compels carriers to mimic an incumbent LEC's own retail services. In contrast, the unbundled network element model, provided for under Section 251(c)(3), encourages facilities investment by new entrants and permits such carriers to employ incumbent LEC network capabilities. This will allow new entrants to craft their own innovative retail services, defining the features, calling areas, and pricing design of those services in such a way as to present attractive alternatives to incumbent LECs' own offerings.

The Commission should keep in mind that Congress established network unbundling and service resale requirements as two complementary avenues for new entrants to provide service without always first constructing their own local networks. Each approach has an independent Section 252 pricing requirement that the new entrant cannot ignore in making its networking decisions. The "avoided cost" approach to pricing applies only to resale of end user offerings under Section 252(d)(3), and not to a carrier's purchase of a combination of network elements as provided in Section 251(c)(3). The pricing of network elements is governed by the "cost-based" standards of Section 252(d)(1).

Section 251(c)(4) imposes the clear obligation on incumbent LECs to offer, at wholesale rates, all retail services to other carriers for purposes of resale. Wholesale rates are to be determined by subtracting the incumbent's avoided costs associated with marketing, billing, etc., from the retail rate. A proper construction of this provision is that any new costs associated with making a wholesale offering, *e.g.*, costs of implementing new billing arrangements, must be netted against costs otherwise avoided in order to arrive at the wholesale rate. The sole exception to the wholesale/retail resale mandate is that a state regulatory commission may prohibit a carrier from buying a service intended for one class of service (residential) and reselling that service to a different category of customer (business). Other than this possible restriction, carriers now are entitled to resell the incumbent retail services, at prices set to reflect the incumbent LEC's net avoided cost.

Although the resale opportunity should be a relatively simple and straightforward market entry option, it has practical limitations. First. the wholesale offering required by the law is merely an echo of the incumbent's own retail service. As such, it will be difficult for companies to differentiate their resold services from the retail services of the incumbent or from other resellers. Second, the incumbent LEC, as the facilities-based provider, is entitled to retain all access charge revenues and universal service cost recovery associated with the reseller's subscribers. In the case of universal service cost recovery, a carrier may be deemed eligible to receive support only if it " . . . uses its own facilities or a combination of its own facilities and resale of another carrier's services . . ." [23/] The logic behind this requirement, in the opinion of the Citizens Companies, is that the carrier that invests in network facilities to provide universal service is entitled to any attendant universal service support. Similar logic dictates that, in the pure resale situation, the incumbent LEC, as the party that has invested in the network capacity required to perform the exchange access function, is the party entitled to retain exchange access revenues. This proposition is supported by the limitation of the Section 251(c)(4)(A) wholesale requirement to " . . . any telecommunications service that the [incumbent LEC] provides at retail to subscribers <u>who are not telecommunications carriers</u> [emphasis added] "

The resale option gives carriers the opportunity to combine local exchange service with their existing products, supported by the new entrants' own sales, marketing, billing, and customer support organizations. As in the case of unbundled network elements, the Commission may need to take steps to ensure that resold services are provided to competitive carriers with the same level of quality that the underlying incumbent LECs provide to their own retail customers. To achieve this result, the Commission must include in its resale policies the requirement that incumbent LECs provide automated, nondiscriminatory operational support mechanisms.

The Citizens Companies believe that Section 252's emphasis upon intercarrier negotiation suggests a light, but firm regulatory hand on the issue of appropriate levels of avoided costs for the wholesale pricing of incumbent LEC retail offerings. Further, rigid rules governing avoided costs may lack sufficient flexibility to deal with the issue of incremental costs that might be incurred by an incumbent in providing a wholesale service. The proper role for the Commission may be to create

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[23/] *See* Section 214(e)(1)(A).

a set of presumptions that the states could follow to identify avoided costs in the absence of quantification of avoided costs by incumbent LECs [24] If it is assumed that such carriers are in the best position to know their costs, the creation of such presumptions will require that those costs be adduced and analyzed if a given carrier chooses to attempt to rebut a presumption.

II.B.4. Duty to Provide Notice of Technical Changes

[Deferred]

II.C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b)

II.C.1. Resale

The Citizens Companies support the concept that restrictions on resale, other than "class-of-service" restrictions contemplated by Section 251(c)(4)(B), should be presumed unreasonable. Because the reasonableness of a resale restriction is primarily an issue of fact, it is unlikely that formal rules, other than creation of the foregoing presumption, are necessary to guide the states.

II.C.2. Number Portability

[Deferred]

II.C.3. Dialing Parity

[Deferred]

II.C.4. Access to Rights-of-Way

[Deferred]

[24] *NPRM* at ¶ 181.

II.C.5. Reciprocal Compensation for Transport and Termination of Traffic

II.C.5.a. Statutory Language

As discussed in Section II.B.2.e.2. of these comments, *supra*, the Citizens Companies are concerned with the implications of paying transport and termination compensation to carriers that do not generate traffic flowing in the reverse direction Several of the Citizens Companies' LECs have recently received interconnection requests involving exclusive one-way trunking arrangements from the LEC networks to the interconnectors' systems Should there be a requirement to pay transport and termination compensation to the requesting carriers, as suggested in their requests, the Citizens Companies' LECs will be in the position of exporting dollars with no opportunity to receive compensation for transport and termination of any traffic in return.[25/] If the term "reciprocal compensation" is given its plain meaning, the obligation to compensate another carrier for call transport and termination connotes some measure of reciprocal traffic flow. Reciprocal compensation also connotes mutuality of benefit to each carrier, which is arguably lacking when traffic flows in just one direction.

The Citizens Companies are not suggesting that balanced traffic flows between interconnecting carriers are necessary to trigger the reciprocal compensation obligation. Instead, a minimum relative traffic flow standard is necessary The minimum level of relative traffic flow needs to be sufficiently low to avoid penalizing new market entrants who may receive more traffic than they

[25/] It should also be noted that a requirement to pay transport and termination compensation on exclusively one-way traffic could lead to abuse by unscrupulous carriers in the form of a terminating compensation "mining" system. In this scam, an operator could set up call generation arrangements in an originating carrier's exchange area to initiate huge volumes of bogus calls terminating on points on the operator's competitive system. The rationale for the scheme is to reap terminating call compensation while not providing any service to customers.

generate. It needs to be sufficiently high to assure some measure of mutual benefit. The Citizens Companies believe that an appropriate treatment of relative traffic flows in order to trigger or maintain the transport and termination compensation requirement is that each carrier originate a negotiated minimum of the total volume of traffic exchanged between the two carriers. A required minimum traffic flow standard will ensure that mutuality of benefit exists as a condition precedent to the reciprocal compensation requirement.

II.C.5.b. Definition of Transport and Termination of Telecommunications

The Citizens Companies believe that a clear distinction, under Section 252(d)(2), exists between transport and termination of traffic. Depending upon the location of the physical interconnection point between two carriers and each carrier's network design,[26/] the terminating carrier may or may not perform any transport service in the call delivery process. The transport function should logically be unbundled from the termination function because an interconnecting carrier may not require both services in delivering traffic to another carrier. For example, if the originating carrier is collocated at a point on the "line side" of the delivering carrier's network, the only service required by the originating carrier is termination to the called party. Where the interconnection/meet point is at any location other than the "line-side" of the terminating carrier's network, application of a transport and/or cross-connect charge, in the case of collocation at switching centers, may be appropriate.

[26/] Establishment of appropriate compensation of transport and termination is complicated by the fact that little uniformity exists between incumbent LEC and competing carrier network design in a given geographic area. While incumbent LEC network architecture is primarily hierarchical in nature, *i.e.*, consisting of end offices, tandem switches and extensive interoffice trunking, competitive LEC networks often consist of fiber optic rings around the service area, with access nodes and a single switches.

Transport and termination charges, must pursuant to Section 252(d)(2), be based on costs incurred,[27] but bill-and-keep arrangements are not precluded. The possible confluence of intercarrier local termination charges and flat-rate retail local exchange pricing represents a particularly difficult problem that does not suggest candidacy for resolution in a rule. There are several options for dealing with intercarrier compensation, including, but not limited to, charges for each port used, charges per minute of use and bill-and-keep. The simplest approach is bill-and-keep or mutual traffic exchange in which carriers make no explicit charge for terminating local traffic that originates on other networks. This option is equitable only if traffic flows are approximately balanced. The absence of an explicit termination charge could promote competition for residential customers, since requiring entrants to pay for termination on a per minute basis could make it extremely difficult for them to offer the flat-rate local residential service desired by many state regulators. The administrative and monitoring costs of bill-and-keep are low. The availability of bill-and-keep arrangements as an interim, default option in the event that carriers cannot reach voluntary agreement is an important tool in equalizing the bargaining power of the parties and in avoiding delay in competitive entry.

In the event of substantial, persistent imbalance in traffic flows persist between carriers, the bill-and-keep/mutual exchange options are problematic because the carrier terminating a large volume

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[27] The carrier common line charge and the residual interconnection charge are clearly inappropriate for inclusion in constructing local traffic transport and termination charges, as they do not reflect traffic sensitive costs. This is not to suggest that the remaining components of the interexchange carrier access charge structure, less the non-cost-based elements, is necessarily inappropriate as a methodology for intercarrier compensation. The conceptual problem with use of a modified access structure is not in the structure itself, but rather in arriving at cost-based pricing for the applicable elements.

of traffic in relationship to what it delivers to the interchanging carrier has less of an opportunity to offset its increased call terminating expense with originating traffic revenues.

As interchanged traffic flows may not, in actual practice, be relatively balanced, some method of compensating carriers with persistent net flow imbalances must be considered. Carriers could compensate each other for net terminations or termination minutes, or they could purchase flat-rate termination capacity on each other's networks. Mutual reciprocal compensation rates could be set either through negotiation among carriers or, to the extent necessary, by state commission arbitration guided by the following principles:

(1) Intercarrier compensation for any type of traffic, whether local, toll , intrastate or interstate, should be cost-based and symmetrical, reflecting comparable treatment of each minute of use generated by each carrier.

(2) For purposes of intercarrier compensation (but not necessarily end user. retail pricing), all LECs, incumbent and competitive, should use the same state commission-defined local and toll calling areas. Until state and federal access charges are cost-based, compensation for traffic crossing a toll boundary should be through carrier access charges, even if the originating carrier chooses to provide its customers with flat-rated pricing for such traffic.

(3) No mutual compensation arrangement should impose full per-call measurement of local terminations unless such measurement and billing can be shown to be administratively efficient, technically feasible and cost effective.

(4) No non-cost-based elements should be included in any pricing of call transport and

termination.

II.C.5.c. Rate Levels

It is clear to the Citizens Companies that Section 252(d)(1)'s provisions governing pricing of interconnection and network elements are conceptually different, and should be viewed independently, from Section 252(d)(2)'s provisions governing pricing of the transport and termination of traffic. Interconnection and network elements are physical things that a carrier needs to connect its network with those of other carriers and to operate its network, respectively. Physical interconnection is needed by all carriers for interoperability, and network elements consist of equipment and facilities that one carrier purchases from another carrier to operate its network. In this sense, network elements secured from another carrier can be said to be as much a part of the acquiring carrier's network as if they were owned outright.

The call transport and termination function that is the subject of the Section 251(b)(5) reciprocal compensation requirement is for the transport and delivery of traffic received from an originating carrier. That service is the use of the terminating carrier's network facilities on the latter carrier's side of the physical interconnection/meet point. The terminating carrier incurs expenses in terminating traffic and should be compensated for those expenses independently of whether it is also paying the originating carrier for network elements. Therefore, the transport issue raised by the Commission, *i.e.*, how to distinguish between the pricing of transport as an unbundled element and as a component of reciprocal compensation,[28/] is of little practical import. Assuming equivalency of pricing, a reasonable assumption since cost-based pricing appears to be required under both Section

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[28/] *NPRM* at ¶ 233

252(d)(1) and (d)(2), the question of charges for the use of a transport facility in call termination is driven by whose network that facility is deemed to belong. For call transport and termination purposes, the party that controls the transport facility on its side of the physical interconnection/meet point should be compensated for its use in the termination of another carrier's traffic. This is true whether the terminating carrier owns that transport facility or acquires it from the originating carrier as a network element. Either way, the possession of that transport facility by the terminating carrier represents a cost for which it should be compensated as part of its service in terminating the traffic of other carriers.

II.C.5.d. Symmetry

Achievement of competition in the local exchange requires that intercarrier pricing of terminating compensation be symmetrical, for all of the reasons suggested in paragraph 236 of the *NPRM*, and such a requirement should be included in the Commission's rules. No consideration need be given to rules requiring symmetrical rates for interconnection or network elements[29/] for a simple reason -- only incumbent LECs are subject to Section 251(d)(2) and (3)'s interconnection and unbundling requirements. By definition, the Section 252(d)(1) pricing standards do not apply to new entrants.

II.D. Number Administration

[Deferred]

II.E. Exemptions, Suspensions and Modifications

The Citizens Companies believe that Section 251(f) issues involve factual issues that will

[29/] *See, Id.* at ¶ 235.

probably be unique in each case. It will be exceedingly difficult to formulate standards that can contemplate the myriad of different fact situations that the states may be called upon to address. It is correct, as the Commission tentatively concludes, that the states have the exclusive jurisdiction to address such issues.[30] This reservation of exclusive jurisdiction to the states, however, does not necessarily rule out Commission guidelines for state use in dealing with Section 251(f) issues. Any such guidelines should recognize the technical, economic, universal service and general public interest considerations inherent in interconnection relationships between interconnectors and incumbent LECs qualifying for treatment under Section 251(f).

II.F. Continued Enforcement of Exchange Access and Interconnection Regulations

The Citizens Companies do not believe that the new statutory provisions can or will result in any material changes in carriers' equal access and nondiscrimination requirements. The same cannot be said, however, for the preexisting compensation methodology for these arrangements. As discussed in detail in Section II(B)(2)(c)(1) of these comments, *supra*, the application of Sections 251 and 252 principles will inexorably undermine the preexisting state and federal access charge structures. Notwithstanding Section 251(g), the intercarrier compensation scheme will change regardless of whether the preexisting access structure remains unchanged. Regulators have some limited breathing space in which to create a new universal service arrangement and to rationalize access structures into a cost-based model, failing which Section 251(g) will have little meaning as it pertains to compensation issues. The Commission must, as it suggests, convene an access reform docket at the earliest possible moment in order to address affirmatively the practical, access-related

[30] *Id.* at ¶ 261

implications of the new statutory regime.

Conclusion

The Commission's charge from Congress on interconnection issues is to strike a balance between its Section 251(d)(1) mandate to create implementation rules in short order and the heavy burden imposed upon the states in carrying out Sections 251 and 252. Achieving the proper balance rules out both a free ranging, preemptive approach and wholesale abdication of responsibilities to the states. Instead, the overarching philosophy to be followed is one of setting those guidelines necessary for the states to follow to ensure minimum standards of national uniformity in interconnection matters and to foster bargaining equality between incumbent LECs and new entrants. The Citizens Companies, which are involved in most segments of the telecommunications industry, believe that their comments addressing what they perceive to be the major points in this proceeding will assist in development of the necessary balance in federal interconnection rules.

Respectfully submitted,

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